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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,165	04/08/2004	Wilfried Rachse	H 5416 PCT/US	1267
55495	7590	06/08/2006	EXAMINER	
DANN DORFMAN HERRELL AND SKILLMAN A PROFESSIONAL CORPORATION 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 06/08/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/821,165	RAEHSE ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46,53,54 and 73-93 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46,53,54 and 73-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 3, 2006 has been entered.
2. Claims 1-46, 53-54, 73-93 are pending. The status identifiers of claims 74-93 should have been indicated as "Previously Presented".

Claim Rejections - 35 USC § 112

3. Claims 1-15, 36-46, 54, 74-93 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In independent claim 1, line 2, the limitation "uncoated preparation" is nowhere supported in the specification and is considered as new matter.

In claim 79, the maximum molecular weight of the polyethyloxazoline polymers which is 1,000,000 g/mol is nowhere supported in the specification and is therefore considered as new matter. The specification on page 11, lines 11-12, discloses the molecular weight in the range of from 5000 to 100 000 g/mol.

4. Claims 84-86, 91-93 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 84 is indefinite because the phrase “the salts of methacrylic acid” in lines 1-2 lack support with respect to claim 82. This claim should properly depend from claim 83. In addition, the components “acrylamide, styrene, vinyl acetate, maleic anhydride and vinyl pyrrolidone” are not salts of methacrylic acid.

In claims 85 and 86, lines 1 and 2 respectively, the phrase “the comonomer” lacks support with respect to claim 82. These claims should properly depend from claim 83.

The limitations of claims 91-93 lack support with respect to the presently amended claim 1 which cancels the “graft polymers”.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-46, 87 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas et al. (US Patent No. 3,945,936), hereinafter “Lucas”.

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Lucas teaches an article of manufacture especially adapted for bleaching fabrics in an automatic clothes dryer consisting essentially of (a) a water-insoluble, closed, flexible pouch, at least one wall of said pouch consisting of an open pore polyurethane foam having a thickness of from about 0.1 in. (2450 microns) to about 0.5 in. (12700 microns); and (b) an effective amount of a solid, particulate, water-soluble fabric bleaching composition consisting essentially of a peroxygen bleach, said bleaching composition being releasably enclosed within the pouch (see claims 1-2). In general, urethane foams are prepared by polymerizing diisocyanates and hydroxyl-terminated polyethers or polyesters (see col. 3, lines 2-5). The bleaching composition can be any of a variety of solid, water-soluble materials known in the art to be safe and effective for removing stains from fabrics (see col. 3, line 40 to col. 5, line 35). In Example I, the bleaching composition was prepared by admixing screened perborate and TAGU (1,3,4,6-tetra-acetyl glycouril, see col. 5, line 10) and the bleaching composition was placed in a polyurethane pouch which was one-fourth in. thick (see col. 7, line 60 to col. 8, line 12). It seen that the bleaching composition is uncoated. Lucas, however, fails to specifically disclose (1) the wall thickness as those recited and (2) the properties of the unfilled enclosure as those recited in the claims, e.g., deformability, recovery rate and crushing resistance.

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which

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properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges “overlap or lie inside ranges disclosed by the prior art”, see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

With respect to difference (2), it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the film enclosure of Lucas to exhibit similar properties as those recited because structurally similar compounds (i.e., polyurethane) are generally expected to have similar properties, see *In re Gyurik*, 596 F. 2d 1012, 201 USPQ 552. The reference is deemed to teach the claimed composition; the applicant or applicants need to show that his, her, or their invention is actually different from and unexpectedly better than the prior art, see *In re Best*, 195 USPQ 430, 433, 434 (CCPA 1977).

7. Claims 1-46, 53-54 and 73-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber et al. (WO 02/06431), hereinafter “Weber”. (US 2004/0029764, the English equivalent of this reference will be used as the translation.)

Weber teaches a portion of a detergent which is contained in one or more dimensionally stable hollow bodies with at least one compartment, the portion comprising (a) at least one formulation with a detergent action; (b) at least one envelope entirely or partially encompassing at least one formulation according to (a), consisting of a non-pressed material which disintegrates

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in washing or rinsing conditions and which gives the hollow body(ies) dimensional stability; and (c) optionally, one or more devices for forming compartments in the dimensionally stable hollow body(ies), and to a method for producing a detergent portion which is produced by injection molding or solidifying (see abstract of WO '431). Appropriate materials for the hollow body comprise one or more materials from the group consisting of polyacrylamides, oxazoline polymers, polystyrenesulfonates, polyurethanes and mixtures thereof (see page 5, paragraph [0047] and page 43 paragraph [0557] of the US Pub '764). The polyacrylamide has a molecular weight of from 5000 to 5 000 000 g/mol (see page 5, paragraph [0053]). The oxazoline polymers include polyethyloxazoline and polymethyloxazoline having a molecular weight of from 5000 to 100 000 g/mol (see page 5, paragraph [0054]). The polystyrenesulfonates comprise their copolymers with comonomers such as ethyl (meth)acrylate, methyl (meth)acrylate and the salts of methacrylic acid such as sodium (meth)acrylate; the comonomer content is from 0 to 80 mol% and the molecular weight is within the range from 5000 to 500 000 g/mol (see page 5, paragraph [0055]). The polyurethanes include the reaction products of diisocyanates with polyalkylene glycols, especially polyethylene glycols of molecular weight from 200 to 35 000, or with other difunctional alcohols to give products having molecular weights of from 2000 to 100 000 g/mol (see pages 5-6, paragraph [0056]). Other materials for the hollow body include polyalkylene oxides, preferably polyethylene oxides having molecular weights of from 600 to 100 000 g/mol and their derivatives modified by graft copolymerization with monomers such as vinyl acetate, acrylic acid and its salts and the esters thereof, methacrylic acid and its salts and the esters thereof, (example: poly(ethylene glycol-graft-vinyl acetate), and the polyglycol fraction should be from 5 to 100% by weight, the graft fraction should be from 0 to 95% by weight; the latter

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may be composed of one or of two or more monomers (see page 5, paragraph [0051]). The wall thickness of the hollow body is from 100 to 5000 μm (see page 24 paragraph [0344]). Weber, however, fails to specifically disclose an uncoated preparation and the properties of the unfilled enclosure as those recited in the claims, e.g., deformability, recovery rate and crushing resistance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the detergent formulation of Weber to be uncoated because there is no disclosure that it is coated and the film enclosure of Weber to exhibit similar properties as those recited because structurally similar compounds (i.e., polyacrylamides, oxazoline polymers, polystyrenesulfonates, polyurethanes and mixtures thereof) are generally expected to have similar properties, see *In re Gyurik*, 596 F. 2d 1012, 201 USPQ 552. The reference is deemed to teach the claimed composition; the applicant or applicants need to show that his, her, or their invention is actually different from and unexpectedly better than the prior art, see *In re Best*, 195 USPQ 430, 433, 434 (CCPA 1977).

Applicant cannot rely upon the foreign priority papers to overcome this rejection because **a translation of said papers has not been made of record** in accordance with 37 CFR 1.55. See MPEP § 201.15.

Response to Arguments

8. Applicant's arguments filed April 3, 2006 have been fully considered but they are not persuasive.

With respect to the 35 USC 112, first paragraph rejection, Applicants argue that Applicants believe that paragraphs [0227] and [0237] support the “uncoated preparation” limitation, the preparation or cleaning product composition set forth in [0227] gives no indication that it is coated, and in [0237] the enclosure is filled with a liquid detergent formulation, i.e., a preparation that cannot be coated.

The Examiner has carefully considered the alleged support for the “uncoated preparation” limitation, however, said paragraphs fail to provide support for said limitation. *“The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.”* See MPEP 2173.05(i).

With respect to the rejection based upon Weber, Applicants argue that the Weber patent is not prior art because Applicants have claimed the benefit of International Application No. PCT/EP02/09970, filed September 6, 2002, and of German Application No. DE 101 49 718.0, filed October 9, 2001, whereas Weber has an effective filing date of January 24, 2002, which is the Publication Date of International Application No. WO 02/06431 A2.

As stated above, Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15. In addition, independent claim 1 and its dependent claims (i.e., claims 2-16, 54, 74-93) which “uncoated preparation” limitation is not fully supported by the priority documents cannot rely on their priority dates, hence, the Weber reference is available as a prior art.

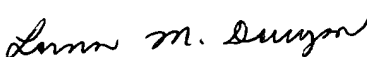
Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lorna M. Douyon
Primary Examiner
Art Unit 1751